U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-S-

DATE: MAY 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and researcher in the field of cardiology, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver (NIW) of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner established his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief in which he argues that the Director's decision did not sufficiently articulate a ground for denial, and that the previously submitted evidence demonstrates his eligibility for a national interest waiver.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]
> >
> > (ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –
> >
> > > (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
> > >
> > > (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

In addition to finding that the Petitioner qualifies as an advanced degree professional, the Director determined that his proposed work as a cardiology researcher has substantial intrinsic merit and that the benefits of such work are national in scope. The only finding at issue in this matter is whether the Petitioner established that his past record of achievement is sufficient to meet the third prong of the *NYSDOT* national interest waiver analysis.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as a resident assistant professor at [redacted] in [redacted] Nebraska. In an introductory letter, he indicated that his work involves clinical treatment, medical research, and teaching duties. He stated that his research, which focuses on improving the treatment of cardiovascular disease, "is having a widespread impact on the quality of medical care across the United States."

Documentation supporting the Form I-140 included evidence regarding the Petitioner's credentials, professional memberships, research activities, grants from [redacted] and his service as a peer reviewer in his field. The Petitioner provided copies of nine published journal articles and several conference presentations that he had authored or co-authored, and documentation indicating that his work had been cited six times. He also submitted letters from professionals in his field attesting to his clinical expertise and the significance of his medical research.[2]

[redacted] professor of medicine at [redacted] stated that the Petitioner "has done several important studies on heart disease that have had a great effect on the way patients with cardiac disease are treated in the United States." He did not further describe the Petitioner's past research studies or their impact, but discussed a prospective research project in which the Petitioner will study the effect of statins on atrial fibrillation after heart surgery. [redacted]

[2] While we discuss only a sampling of these letters, we have reviewed and considered each one.

indicated that this will be the first study to "compare statins in different doses rather than the drug vs. a placebo."

director of cardiac electrophysiology at the described a study in which the Petitioner and his colleagues demonstrated a positive association between epicardial fat (fat surrounding the heart) and diastolic heart failure, and that obese patients have a greater amount of epicardial fat. He stated that the resulting publication in the has "already been cited," and he attested to knowledge of other clinicians and researchers who have relied on the Petitioner's findings but "have not yet had the opportunity to publish their research and cite [the Petitioner's] articles."

In another letter, a professor at the stated that the Petitioner "played a crucial role in several outstanding research projects." As an example, he described a study in which the Petitioner investigated the significance of reciprocal ST-segment depression changes on an electrocardiogram after a heart attack. indicated that a key finding of the research was "that it is very important to perform revascularization in heart attack patients in rural areas," and that this insight "can be applied nationwide." He stated that another important finding was that radial artery access has advantages over the standard femoral approach to coronary intervention in heart attack patients. He indicated that the research was "shared widely" through meeting presentations and a publication, and "has already been cited." He further attested that he "expect[s] many more researchers to refer to it in the future, as it has major implications for the practice of cardiovascular medicine in the United States."

associate professor of medicine at discussed the Petitioner's involvement in research concerning Chagas disease, a disease endemic to Latin America that is "relatively unknown" in the United States. He stated that the Petitioner and his colleagues performed research that provided crucial data on the prevalence of Chagas disease in the United States and helped increase awareness among the public and in the medical profession. He indicated that the research was disseminated through presentations and publications in several journal articles and "has been cited three times." further stated that the research team "received support for this project from internationally well-known organizations such as the Center for Disease Control and Prevention (CDC) and Drugs for Neglected Diseases Initiative (DNDi)," and that their work "was covered in the popular press." The Petitioner provided a copy of a 2012, article in the which quotes his co-author director of the Chagas treatment program at The article does not specifically reference research conducted by the Petitioner or his colleagues, but it discusses community outreach efforts taken by program. The record also includes the transcript of a program in which discusses the lack of awareness and attention surrounding Chagas disease.

In addition to discussing the Petitioner's research as noted, some of the above letters described his teaching skills and his clinical expertise, including his skills in performing complex medical

procedures. Several of the letters also mentioned a shortage of cardiologists in the United States, and the Petitioner submitted copies of media articles addressing that issue.

In a request for evidence (RFE), the Director noted that the third prong of *NYSDOT* requires a petitioner to establish a history of achievement with some degree of influence on the field as a whole. The RFE stated that the record demonstrated the Petitioner's "potential to be an influence" on his field, but that the "corroborating evidence" did not establish that he had achieved such influence. The Director requested documentation regarding his past record of specific prior achievement, including additional evidence regarding citation and recognition of his work.

In response, the Petitioner submitted documentation regarding his recent research projects, peer review work, presentations, and publications since filing, and updated evidence showing 10 total citations of his research. He also provided two additional letters of support. chief cardiology fellow at the discussed his own citation of a case study that the Petitioner published, and attested to gaining significant knowledge from the Petitioner's article that he can apply to his own patients where appropriate. He stated: "[The Petitioner's] paper has made us aware of the fact that there is a possible link between cocaine abuse and isolated right ventricular infarction, and provides us with a valuable insight for future clinical practice and research."

In the second letter, associate professor of medicine at the described a recent study in which the Petitioner investigated implantable cardioverter defibrillators (ICDs). While ICDs are traditionally tested upon implantation, the Petitioner found that such testing has no effect on outcomes and is thus unnecessary. characterized the Petitioner's findings as "a breakthrough discovery," and stated that "the cost savings that should result from application of the results could be quite profound." He indicated that the presentation of this research received "a great deal of attention" at an annual scientific meeting of the and attested to his certainty that "the recommendations from this study will be widely applied."

The Petitioner also provided a copy of a February 16, 2015, letter offering him a fellowship position in the program at In a letter responding to the RFE, the Petitioner stated that the offer letter shows has recognized that [his] past achievements justifies [sic] the projection of future achievements," and asked that USCIS "apply similar criteria to evaluate [the Petitioner's] credentials and come to the same conclusion." In addition, the Petitioner contended that the previously submitted letters constituted credible evidence of his influence on the field, and that they were further supported by corroborative documentary evidence, including copies of his publications, presentations and research projects.

In denying the Form I-140, the Director found that the record lacked "independent and objective evidence of the [Petitioner's] influence on the field" to satisfy the third prong of the *NYSDOT* analysis. The decision stated that the Petitioner had not demonstrated a significant record of citation,

and that the submitted letters, while complimentary of the Petitioner's work, were insufficient to establish his eligibility for a national interest waiver. The Director indicated that the Petitioner had contributed research to his field, but that "it must also be shown that your contributions have significantly impacted the field, and the record lacks such evidence." On appeal, the Petitioner contends that his previously submitted evidence establishes his eligibility for a national interest waiver, and that the Director's decision did not adequately explain the basis for the denial.

We disagree with the Director's interpretation of *NYSDOT*'s third prong as requiring a petitioner to have "significantly impacted" his field of endeavor. As stated above, the analysis set forth in *NYSDOT* requires a petitioner to establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

The Petitioner provided letters attesting to the importance of his work, and many of these letters describe the potential of his findings to affect medical research and clinical practice. For instance, stated that the findings from the Petitioner's research on ICD testing "will be widely applied" and "should result" in profound cost savings. In addition, indicated that the results of the Petitioner's study reciprocal ST-segment depression changes "can be applied nationwide." However, these statements of prospective benefit do not demonstrate that the Petitioner's findings have already influenced clinical treatments of such conditions. Several letters included statements that the Petitioner's research has "already been cited" or has affected the practice of cardiology, but neither the content of the letters or the evidence in the record is sufficient to support a finding that his record of citation is indicative of an impact on the field as a whole, or that his research has been widely implemented in clinical settings. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We note that the Petitioner contended in his RFE response letter that copies of his publications and presentations serve as corroborative evidence of his influence on the field. Although such evidence demonstrates that the Petitioner's research findings were shared with others and may be acknowledged as original based on their selection to be presented or published, it does not establish that those findings have had an impact on the field as a whole. In addition, the Petitioner argued that his selection for a fellowship program shows that found his past record sufficient to justify projections of future achievement. However, the record does not include evidence indicating that the Petitioner's fellowship was awarded based on a finding that he had a degree of influence on the field as a whole, as we seek here. With regard to the Petitioner's request that we "apply similar criteria" to that used by the fellowship selection committee, we note that, by law, we are required to follow the analysis set forth in *NYSDOT* as published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers. For the reasons discussed above, we find the record insufficient to establish that the Petitioner has had some degree of influence on the field as a whole.

Regarding the evidence submitted at the time of filing about the demand for cardiologists in the United States, we note that section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. To qualify for that waiver, it is not sufficient for a petitioner to submit evidence regarding a shortage of physicians in his or her field of practice. Rather, the waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet these regulatory requirements.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-S-*, ID# 16702 (AAO May 25, 2016)